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ABSTRACT

This digest provides an analysis of sexual harassment in the context of Title IX issues. It features five articles, all of which examine a different component of Title IX concerns. It reports on a 1993 national survey that found that sexual harassment remains a significant problem, affecting both males and females. Two-thirds of all students surveyed reported being the targets of sexual comments, jokes, gestures, or looks. Recent court decisions have helped clarify what constitutes sexual harassment, and guidelines for schools are offered, such as the statement that sexual harassment is more than a peck on the cheek. The text describes ways that schools should respond to sexual harassment, including the admonition that the punishment should fit the crime. Strategies for handling sexual harassment include keeping a diary if sexual harassment happens more than once. Some trends in litigation involving sexual harassment are detailed, including some Supreme Court decisions and the recent case in which schools must receive actual notice of harassment to be held liable. For schools to be in compliance with Title IX, they must hire a coordinator who investigates complaints and other concerns. (RJM)

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WEEA Equity Resource Center

25 Years of Title IX Digest

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Title IX and Sexual Harassment

By Susan J. Smith, Education Development Center

As part of a year-long twenty-fifth anniversary celebration, we are devoting several issues of the WEEA Digest *to the subject of Title IX, the federal law that prohibits gender discrimination in education. This issue is the second in the "25 Years of Title IX" series. It continues the discussion by focusing on sexual harassment, a subject that had not even been recognized as a concept when Title IX was enacted. Yet today sexual harassment in schools is alarmingly widespread, imposing barriers to full and equal participation in education.*

Sexual harassment, defined as unwanted and unwelcome behavior of a sexual nature, affects students in educational institutions ranging from elementary to postgraduate schools.

Sexual harassment, defined as unwanted and unwelcome behavior of a sexual nature, affects students in educational institutions ranging from elementary to postgraduate schools. In fact, the *Report Card on Gender Equity* from the National Coalition for Women and Girls in Education (NCWGE) gave progress in eliminating sexual harassment the lowest rating (a "D+") in its assessment of nine key areas of education affected by Title IX over the past 25 years.[1] Concluding that "sexual harassment remains a significant impediment to gender equity for girls and women across the board," the *Report Card* cited the following statistics:

- 81 percent of eighth through eleventh graders surveyed have experienced sexual harassment, with girls experiencing harassment at a slightly higher rate than boys—85 percent versus 76 percent, respectively.
- 79 percent of eighth through eleventh graders reporting harassment say they were targeted by another student.
- Approximately 30 percent of undergraduate students and 40 percent of graduate students surveyed have experienced sexual harassment.
- Approximately 90 percent of post-secondary students reporting harassment say they were harassed by another student.[2]

These findings were contained in a 1993 Louis Harris and Associates study commissioned by the American Association of University Women's Educational Foundation which surveyed more than 1,600 public school students from across the United States.[3] In this study, students were asked to indicate how often, over the course of their school careers, they had experienced unwelcome or unwanted behaviors that are defined as sexual harassment. The behaviors were defined for students in the following way: "made sexual comments, jokes, gestures, or looks; showed, gave, or left you sexual pictures, photographs, illustrations, messages or notes; wrote sexual messages/graffiti about you on bathroom walls, in locker rooms, and so forth; spread sexual rumors about you; said you were gay or lesbian; spied on you as you dressed or showered; flashed or "mooned" you; touched, grabbed, or pinched you in a sexual way; pulled at your clothing in a sexual way; intentionally brushed against you in a sexual way; pulled your clothing off or down; blocked your way or cornered you in a sexual way; forced you to kiss him/her; or forced you to do something sexual, other than kissing."

Sexual harassment is a problem affecting both genders. Two-thirds of all students surveyed reported being the targets of sexual comments, jokes, gestures, or looks: 76 percent of the girls and 56 percent of the boys. Eleven percent of the students reported being forced to do something sexual other than kissing: 13 percent of the girls and 9 percent of the boys.[4]

The experience of sexual harassment seems to have an effect on all students' educational, emotional, and physical development, although girls report more problems than boys. For example, 33 percent of girls who suffered sexual harassment said they did not want to attend school compared with 12 percent of boys;

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32 percent reported not wanting to talk as much in class compared with 13 percent of boys; 28 percent found it harder to pay attention in school compared with 13 percent of boys; and 18 percent of girls reported thinking about changing schools compared with 6 percent of boys.[5]

Implementing a clear policy against sexual harassment is key to preventing incidents.

How early in one's school career does sexual harassment begin? According to the study, a student's first experience of sexual harassment is most likely to occur in the middle school/junior high years of 6th to 9th grades: 47 percent of the students who have been harassed fall into this group (40 percent of the boys and 54 percent of girls). Thirty-two percent (32 percent) experienced harassment before 7th grade (34 percent of girls, 32 percent of boys). Forty-two percent (42 percent) of African American girls and 40 percent of Hispanic girls have been targeted this early, compared with 31 percent of white girls. Some students (6 percent) first experienced unwanted advances before the third grade—notably 10 percent of Hispanic girls.[6] Special education students face additional challenges in dealing with sexual harassment in school, and students with cognitive disabilities may be at an even greater risk of being sexually harassed by other students due to their increased vulnerability.[7]

The detrimental effects of sexual harassment are only compounded by schools' failure to have policies and procedures in place to address this issue meaningfully. For example, in a 1993 study conducted by the NOW Legal Defense and Education Fund and the Wellesley College Center for Research on Women, only 8 percent of the respondents reported that their school had and enforced a policy on sexual harassment.[8] Further, the study found that schools without policies are less likely to take action against an alleged harasser: schools with policies took action in 84 percent of cases, compared to schools without policies doing so only 52 percent of the time.[9]

Who is doing the harassing and why? It is generally believed that power, not sexual attraction, is the impetus for sexual harassment. In the school setting, adults who work as teachers, administrators, and other school staff have power over students. Some abuse that power in the form of sexual harassment. When Lee, Croninger, Linn, and Chen re-analyzed the data from the 1993 AAUW survey, they found that, over the course of their school careers, sizable proportions of students (especially girls) reported being harassed by school employees: principals (2 percent), teachers (16 percent), and staff (44 percent).[10] However, students also harass their peers. In fact, in their analysis, Lee et al. found that 96 percent of the students who reported being harassed had been harassed by a fellow student.[11] Further, more than half of these students (males and females) say that they have committed at least one act of harassment against someone else at school. The pervasiveness of peer-to-peer harassment and this study's finding about students who are both victims and perpetrators raises new issues about why students harass and how to effectively combat harassment among students. Additional research is needed in this area.

The U.S. Supreme Court has made it clear that Title IX applies to sexual harassment. Guidelines released by the U.S. Department of Education's Office for Civil Rights (OCR) in March of 1997 are meant to clarify schools' responsibilities in preventing it and resolving allegations of sexual harassment once they arise.[12] The OCR guidelines are accessible on the Internet (www.ed.gov/offices/OCR).

Sexual harassment in schools is a symptom of ongoing gender bias. Parents, teachers, administrators, and students all need to work together to eliminate this form of discrimination in the classroom and in the hallways. Implementing a clear policy against sexual harassment is key to preventing incidents. Further, expectations for gender equitable education enable students, educators, and administrators to recognize bias and harassment. It all begins with awareness of the issue. Following are suggestions for students and staff to help increase awareness:

- Talk about the broader issues of gender bias, sex-role stereotyping, and discrimination and work to promote gender equity.
- Find out if your school has a sexual harassment policy. If so, work to increase awareness among faculty, staff, and students about what the policy says and who to go to if there is a problem.
- Talk to your peers.

Continued p. 5, "Increase Awareness"

Sexual Harassment: Let the Punishment Fit the Crime

By Verna Williams and Deborah L. Brake, National Women's Law Center

At the end of its 1997–98 term, the Supreme Court decided *Gebser v. Lago Vista Independent School District*, which limits the availability of money damages in cases where teachers sexually harass students. Now, in order to get damages in a private lawsuit under Title IX, students or their parents must prove that top school officials actually knew about the specific misconduct, and that they were deliberately indifferent to it. This is a much tougher standard than for employees seeking relief under Title VII of the Civil Rights Act of 1964. However, Department of Education policy makes clear that schools that misread *Gebser*, and adopt a "head in the sand" response to sexual harassment, could find themselves in violation of Title IX, thereby jeopardizing their federal funding.

OCR's Sexual Harassment Guidance

Significantly, the decision in *Gebser* did not set aside the "Sexual Harassment Guidance" policy developed by the Department of Education's Office for Civil Rights (OCR). This important policy, which signifies a major step toward gender equity, provides detailed guidance about preventing or eliminating sexual harassment of students in educational institutions. The following real incidents demonstrate how necessary this guidance is:

- A first-year college student is raped by two football players in a university dormitory. University officials find one of the assailants guilty and recommend a two-semester suspension—to take effect *after* he graduates.*
- A university prohibits students complaining of sexual harassment from having legal representation in fact-finding proceedings but allows students accused of harassment to have such assistance.
- A high school bars students from holding hands in response to complaints by several girls that another student sexually assaulted them.

* The continuum of behavior covered by sexual harassment includes rape, a criminal activity. Therefore, a student in those circumstances could press legal charges against the harasser and/or file a complaint with school officials.

Clearly, sexual harassment has provoked both overreaction and underreaction by educators. The guidance draws on the OCR's expertise in investigating harassment complaints. While acknowledging the complexity of sexual harassment, the guidance urges institutions to use their judgment and common sense to avoid violating Title IX.

The foundation of the guidance is a unanimous Supreme Court decision in 1992, in *Franklin v. Gwinnett County Public Schools*, that held that Title IX bars sexual harassment and allows victims to recover damages from institutions that violate the statute. Later conflicting court rulings on other issues, however, have complicated institutions' efforts to design anti-harassment policies to comply with *Franklin*.

The OCR's guidance provides a solid foundation for analyzing claims of sexual harassment, sorting through these conflicting legal decisions, and establishing sound principles. For example, the guidance notes that Title IX covers student harassment of other students—not just employees' harassment of students. On this issue, the guidance generally applies well-established principles developed in litigation on sexual harassment in the workplace to make clear what kind of conduct violates Title IX's prohibition against sex discrimination. The guidance, however, acknowledges that differences between work and educational settings may justify some departure from the workplace standards.

Sexual Harassment in the School Setting

Understanding the following principles outlined in the guidance should help educators design sensible anti-harassment policies:

Sexual harassment is more than a peck on the cheek. Sporadic and trivial incidents of objectionable behavior simply are not sexual harassment. Labeling or treating them as such does a disservice to the many students harmed by degrading and offensive sexual conduct. Real sexual harassment encompasses a wide range of conduct that can be classified in two categories: *quid pro quo* (in Latin, meaning liter-

Sporadic and trivial incidents of objectionable behavior simply are not sexual harassment.

Let the Punishment Fit . . . continued

ally, "this for that") and hostile environment harassment. Title IX bars both types, which may occur simultaneously.

"Unwelcomeness" is a key component in defining sexual harassment.

In ***quid pro quo*** situations, a person in authority links some aspect of a student's education to the student's response to sexual overtures. The classic example is a professor who demands sex for an "A" in his course, but *quid pro quo* harassment may include more subtle threats or promises.

Hostile environment harassment does not necessarily involve sexual blackmail (although it may), and its perpetrators may be college employees, students, or other people on a campus. The guidance defines this type of harassment as unwelcome verbal or physical conduct that is sufficiently severe, pervasive, or persistent to create an abusive or hostile environment from the perspective of the affected student and a reasonable person in that student's shoes. The more severe an incident is, the less frequent it must be to meet this standard. For particularly severe and egregious conduct, such as sexual assault, once is enough. Less severe conduct, such as abusive language, must occur frequently to create a sexually hostile environment.

Schools cannot ignore sexual harassment of students by other students. Stereotypes about the way in which men and women, boys and girls interact will no longer suffice. Drawing on Congress's intent that students be able to learn in an environment free from all forms of sex discrimination, including sexual harassment, the guidance makes clear that schools cannot allow behavior that creates a hostile environment and prevents a student from learning or participating in school activities. This conclusion is consistent with the workplace standards that protect employees on the job, standards applied by various federal courts to education cases.

Institutions must take prompt and appropriate corrective action.

Title IX Requirements

Title IX does not ban flirtation. The guidance makes clear that "unwelcomeness" is a key component in defining sexual harassment among students and, at the postsecondary level, in employee-student relationships. Sexual overtures from one student to another, or from an employee to a college student, are not sexual harassment if the advances are welcome. The guidance acknowledges that consensual sexual relations between students and employees of postsecondary institutions are possible.

In handling disputes about whether harassment occurred or whether the sexual conduct was welcome, institutions should consider "the totality of the circumstances." These include the degree of influence the employee has over the student, the student's ability to consent (a student's age or certain types of disabilities might affect this), statements by any witnesses about the alleged harassment, and the relative credibility of the people involved (have other complaints been filed against the alleged harasser, or has the complainant made false accusations against others in the past?).

Title IX does not suppress academic discourse, even if it is offensive. Classroom discussion of ideas that some students find distasteful or embarrassing does not constitute sexual harassment. Indeed, at public institutions, the First Amendment protects such discussions when they are consistent with the educational mission. For example, the guidance noted, it would not violate Title IX if a creative writing professor's required reading list included excerpts from literary classics that contained explicit descriptions of sexual conduct, including "scenes that depict women in submissive and demeaning roles." If students' essays, read aloud in this professor's class, contained sexually derogatory themes about women, this academic discourse also would not be considered in violation of Title IX. In contrast, a pattern of derogatory language targeting women in a class would create a hostile environment and would not be protected speech.

Responding to Sexual Harassment

Despite the complexities of making determinations in some cases, it is clear that inaction is the wrong answer. The guidance states that refusing to address persistent or serious sexual harassment will land institutions in trouble. They must take prompt and appropriate corrective action, whether the harasser is a college employee, a fellow student, or anyone else on the campus, such as a member of a visiting football team.

Continued p. 5: "Let the Punishment Fit"

WEEA Resources for Sexual Harassment Issues

Gender Stereotypes: The Links to Violence

Provides practical solutions to the pervasive problems of sexual abuse and dating violence. Addresses the issues of stereotyping and gender expectations which compound adolescents' vulnerability to violence. From the Equity in Education Series. (25 pp.) 1995•#2763•$4.00

Gendered Violence:

Examining Education's Role

Offers a new framework for understanding the systemic and personal issues we must address to create schools and a society that affirm positive relationships by exploring gender-role socialization and the role of schools. From the Working Papers Series. (31 pp.) 1995• #2758•$4.00

In Touch with Teens:

A Relationship Violence Prevention Curriculum for Youth Ages 12–19

Explores the roots of violence, the media's impact, sexual harassment, and the building blocks of a good relationship. In Spanish and English. From the L.A. Commission on Assaults Against Women. (135 pp.) 1993•#2790 •$30.00

Sexual Harassment and Teens

Confronts the issues, reveals the myths and stereotypes, relates the facts, and presents a program for positive change. From Free Spirit Publishing. (160 pp.) 1992•#2786•$17.95

Practical Tools and Support

The WEEA Equity Resource Center at EDC can help you find the tools you need to create gender-fair multicultural learning environments.

EQUITY ONLINE is the center's web site. It's full of exciting information and tools, from fun facts about the history of equity to a list of practical curricula designed to help make any subject gender-fair. Previous issues of the *WEEA Digest* are also available to read on-line or download.

www.edc.org/WomensEquity

EDEQUITY (the Educational Equity Discussion List) is designed to encourage discussion about international theory and practice. List participants are educators, administrators, equity practitioners, advocates, parents, policymakers, counselors, and many others interested in equity.

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Increase Awareness . . . continued

- If you or someone you know is being harassed, tell the harasser to stop.
- Report incidents of sexual harassment to the proper authorities: the Title IX coordinator, the principal, a teacher, or a counselor.
- If you experience incidents of sexual harassment, write down the details: dates, times, places, witnesses.
- If your school has a sexual harassment policy, follow the procedures for filing a complaint.
- If the problem can't be resolved at the school level, file a complaint with the U.S. Department of Education's Office for Civil Rights.

More Information and Assistance

To locate your state equity coordinator, your regional Desegregation Assistance Center and Comprehensive Assistance Center, and other helpful organizations, call the WEEA Equity Resource Center's Technical Assistance Hotline (800-225-3088, TTY 800-354-6798) or consult the Title IX section of our web site:

www.edc.org/WomensEquity/title9.html

Notes

1 National Coalition for Women and Girls in Education. *Title IX at 25: Report Card on Gender Equity* (Washington, D.C.: National Women's Law Center, 1997).

2 National Coalition for Women and Girls in Education.

3 American Association of University Women Educational Foundation, *Hostile Hallways: The AAUW Survey on Sexual Harassment in America's Schools* (Washington, D.C.: American Association of University Women, 1993).

4 American Association of University Women Educational Foundation.

5 Ibid.

6 Ibid.

7 S. Strauss, *Sexual Harassment and Teens* (Minneapolis, Minn.: Free Spirit Publishing, 1992).

8 NOW LDEF and the Wellesley College Center for Research on Women developed and co-sponsored a survey that was published in the September 1992 issue of *Seventeen* magazine. Over 4,200 girls responded to the survey. The results were published in March 1993. N. Stein, N. L. Marshall, and L. R. Tropp, *Secrets in Public: Sexual Harassment in Our Schools* (1993).

9 Stein et al.

10 V. E. Lee, R. Croninger, E. Linn, and X. Chen, "The Culture of Sexual Harassment in Secondary Schools" *American Educational Research Journal*, (Washington, D.C.: American Educational Research Association, 1996).

11 Lee et al.

12 U.S. Department of Education, "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties," 62 Fed. Reg. 12,034 (Washington, D.C.: Office for Civil Rights, 1997). ◆

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Organizations for Sexual Harassment Issues

These organizations contributed to the development of this digest. For additional resource organizations, visit our web site **(www.edc.org/WomensEquity).**

American Association of University Professors
Committee on the Status of Women in the Academic Profession
1012 14th Street, NW, Suite 500
Washington, DC 20005
(202) 737-5900
www.aaup.org

Center for Research on Women
Wellesley College
106 Central Street
Wellesley, MA 02181-8259
(781) 283-2500
www.wellesley.edu/WCW/index.html

National Association for Women in Education
1350 Connecticut Avenue, NW, Suite 850
Washington, DC 20036-6511
(202) 833-3331

National Women's Law Center
11 Dupont Circle, NW, Suite 800
Washington, DC 20036
(202) 588-5180

NOW Legal Defense and Education Fund
99 Hudson Street
New York, NY 10013-2871
(212) 925-6635
www.nowldef.org

Let the Punishment Fit . . . continued

Procedures that are fair to all parties involved are critical to the integrity of any sexual harassment investigation.

Foremost in determining a response should be the severity and nature of the harassment. The punishment must fit the crime. Waiting until graduation to enforce disciplinary action against a student who raped another student would not meet this test. Institutions also must ensure that their response does not penalize the victim—for example by rearranging the victim's schedule or living arrangement to limit contact with the harasser, instead of modifying those of the harasser. Depending on the type of allegations, institutions also may need to take interim measures to protect a complaining student pending the outcome of an investigation.

Guidance Promotes Common Sense

Procedures that are fair to all parties involved are critical to the integrity of any sexual harassment investigation. Title IX requires all institutions to implement prompt and equitable procedures to address sex discrimination, and public institutions must also comply with the due process clause of the U.S. Constitution in disciplining students and teachers. The guidance makes clear that due process does *not* mean tilting the scales in favor of the accused by limiting the complainant's access to evidence or legal representation.

Several other lessons can be drawn from the guidance. Paramount among them is that institutions should exercise common sense in handling incidents of sexual harassment. Although Title IX does not require institutions to adopt policies specifically prohibiting sexual harassment or to set up grievance procedures for handling complaints of sexual harassment, the guidance makes clear that doing so will help institutions convey to both employees and students what conduct is prohibited and how violations will be addressed. Institutions should train employees in how to identify and report sexual harassment to designated officials who can then take appropriate corrective action. Failure to do so places institutions at risk of legal liability.

While no policy statement can address every set of facts that will arise at institutions, the guidance clarifies some overarching principles and gives educators the specifics they need to deal with sexual harassment, and in the process, to create the learning environment Title IX's framers envisioned for our daughters and sons.

This article is adapted from "Guide to Fighting Sexual Harassment," which appeared in the April 18, 1997, issue of the Chronicle of Higher Education. ◆

Handling Sexual Harassment

By Bernice R. Sandler, National Association for Women in Education

Sexual harassment is a public problem which requires institutions to develop public strategies to address it. However, individuals often need an array of personal strategies to use when sexual harassment strikes. Here are some actions that individuals can take when faced with sexual overtures, sexist remarks, sexual jokes, etc. Not everyone will be comfortable with all of these responses nor are all appropriate for every situation.

- **Don't Just Ignore It in the Hope That It Will Go Away.** It won't. When women ignore sexual harassment, it often is interpreted as a sign of approval—"She didn't say anything so she must really like it." Being quiet about sexual harassment often allows it to continue. However, when you feel unsafe, ignoring sexual harassment is a wise idea. If you feel unsafe, your first priority is to get out of the situation and go somewhere else.
- **Name or Describe the Behavior.** "That comment is offensive to women, it is unprofessional and probably is sexual harassment. That behavior has to stop." Or, "This is the third time you have put your arm around me. I don't like it and I don't want you to do that anymore."
- **Talk to Others.** You are probably not the only one who is being harassed by this person.
- **Keep a Diary or Some Other Record If Sexual Harassment Happens More Than Once or If You Experience a Single Serious Incident.** Write down the date, time, place, witnesses, what happened, and your response. Many months later it might be important for you to remember the details. Writing down what happened also can give you a better sense of what is happening, how often, when, and where. Should you want to bring the information to someone in a position of authority to file a formal complaint, the written information can be considered as evidence that harassment is occurring.
- **Report the Behavior to the Appropriate Person, Such as the Title IX Coordinator.** Keep records of all contacts with the institution. If you feel your complaint is not taken seriously or is handled inappropriately, go up the administrative ladder and talk to someone else.
- **Work Within Your Institution for Preventive Training, Good Policies, and Effective Implementation.** Having policies and procedures in place that prevent sexual harassment from occurring in the first place is the best strategy of all.
- **Write a Letter to the Harasser.** This technique, developed by Mary Rowe at Massachusetts Institute of Technology, has been successful in dealing with sexual harassment as well as other forms of interpersonal conflict. (It will not work with a very hostile person or someone who is sadistic, or with a group of harassers.) The letter consists of three parts: a factual statement of what happened (for example, "Last week you called me a 'bitch' and a 'whore'."); followed by a description of how the incident made the writer feel (for example, "I am very upset with this behavior. I find it offensive."); and finally, a short statement about what the writer wants to happen next (for example, "I want to be treated in a professional manner, the way every student [or employee] has a right to be treated.") Send the letter by certified mail, return receipt requested in order to have a record of the communication. Keep a copy for your records, but do not send a copy to anyone else. If the harasser wants to apologize or explain after receiving the letter, simply say, "I don't want to discuss it. I just want the behavior to stop."

Having policies and procedures in place that prevent sexual harassment from occurring in the first place is the best strategy of all.

This article is excerpted from a longer version that appeared in the Fall 1997 issue of About Women on Campus, *the newsletter of the National Association for Women in Education.* ◆

Additional Resources

Contact these organizations for their resources on sexual harassment.

Bullyproof: A Teacher's Guide on Teasing and Bullying for Use with Fourth and Fifth Grade Students

Sexual harassment in middle school starts with bullying behavior in the elementary school. Guidebook helps teach children to intervene to stop bullying behavior. • By Nan Stein and Lisa Sjostrom (1996). Center for Research on Women, Publications Department, Wellesley College, 106 Central Street, Wellesley, MA 02181-8259; (781) 283-2510. Web: (www.wellesley.edu/WCW/intopub.html).

Do the Right Thing: Understanding, Addressing, and Preventing Sexual Harassment in Schools *and*

Righting the Wrongs: A Legal Guide to Understanding, Addressing, and Preventing Sexual Harassment in Schools

Developed by nationally recognized experts on sexual harassment law, these manuals are designed to help educators, administrators, parents, and students understand the complex area of sexual harassment in schools. Both manuals focus on harassment of students and the legal obligations placed on schools to address issues of harassment. *Do the Right Thing* is designed for non-lawyers, while *Righting the Wrongs* is the legal manual for attorneys and advocates. • By Verna Williams and Deborah Brake (1998). National Women's Law Center, 11 Dupont Circle, NW, Suite 800, Washington, DC 20036; (202) 588-5180.

Flirting or Hurting? A Teacher's Guide on Student-to-Student Sexual Harassment in Schools (Grades 6–12)

Classroom lessons are suitable for social studies, English, psychology, or health classes. This curriculum includes student handouts (case studies, ethnography assignments, quizzes, a survey, definitions, and legal information) as well as teacher materials (including Supreme Court cases and articles from teen magazines and the popular education press). • By Nan Stein and Lisa Sjostrom (1994). Center for Research on Women, Publications Department, Wellesley College, 106 Central Street, Wellesley, MA 02181-8259; (781) 283-2510. Web: (www.wellesley.edu/WCW/intopub.html).

Hostile Hallways: The AAUW Survey on Sexual Harassment in America's Schools

The AAUW Survey on Sexual Harassment represents the first national scientific study of sexual harassment in public schools. Based on the experiences of 1,632 students in grades 8 through 11. • American Association of University Women (1993). American Association of University Women Educational Foundation, 1111 Sixteenth Street, NW, Washington, DC 20036; (212) 785-7700. Web: (www.aauw.org).

IQ Sexual Harassment: What's Going On? A Look at a Disturbing Trend Among Teens

This report explores the elements of harassment among children and teens. • The National Council for Research on Women (1994). The National Council for Research on Women, 11 Hanover Square, 20th Floor, New York, NY 10005; (212) 785-7335. Web: (www.ncrw.org).

Sexual Harassment on Campus: A Guide for Adminstrators, Faculty, and Students

Addresses many issues that have received little attention such as student-to-student harassment, formal and informal resolution, and when and how to use mediation. • Coedited by Bernice R. Sandler and Robert J. Shoop (1996). Allyn and Bacon, 160 Gould Street, Needham Heights, MA 02194; (781) 455-1250. Web: (www.abacon.com).

Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties

Provides standards used by the Department of Education's Office for Civil Rights to investigate and resolve allegations of sexual harassment of students by school employees, other students, or third parties. • Office for Civil Rights (1997). U.S. Department of Education, Office for Civil Rights, Customer Service Team, 330 C Street, SW, Washington, DC 20202; (800) 421-3481. Web: (www.ed.gov/offices/OCR/ocrpubs.html).

Sexual Harassment: Research and Resources, Third Edition

The expanded report of NCRW's Sexual Harassment Information Project summarizes the wealth of research and resources on sexual harassment, including current legal and scholarly interpretations, patterns of behavior of the harassed, myths about harassers, anti-harassment policies and procedures, and efforts needed to bring about significant change. • The National Council for Research on Women (1995). The National Council for Research on Women, 11 Hanover Square, 20th Floor, New York, NY 10005; (212) 785-7335. Web: (www.ncrw.org).

Title IX at 25: Report Card on Gender Equity

Assesses the state of gender equity in education in nine key areas, including sexual harassment. The *Report Card* "grades" the U.S. on indicators such as women's participation rates, enforcement actions by the federal government, and legal developments. • National Coalition for Women and Girls in Education (1997). National Women's Law Center, 11 Dupont Circle, NW, Suite 800, Washington, DC 20036; (202) 588-5180.

Tune in to Your Rights: A Guide for Teenagers about Turning Off Sexual Harassment

A handbook to guide adolescents in responding to sexual harassment. Empowers students to be their own advocates and offers ways to open communication that can lead to changes in behavior. Available in English, Spanish, and Arabic. • Center for Sex Equity in Schools (1985). Programs for Educational Opportunity, Desegregation Assistance Center—Great Lakes Region, 1005 School of Education, University of Michigan, Ann Arbor, MI 48109-1259; (734) 763-9910. Web: (www.umich.edu/~eqtynet/pubs.html). ◆

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Missing: Title IX Coordinators Required by Federal Law

By Ann H. Franke, American Association of University Professors

Virtually unknown, and thus widely overlooked, is the requirement that a college or university must designate an individual to coordinate its compliance with Title IX. The coordinator bears responsibilities that include "investigation of any complaint" alleging gender discrimination [including sexual harassment]. Under federal regulations the institution "shall notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph" (34 C.F.R. § 106.8(a)). Does your institution have a Title IX coordinator? Have you been notified about how to contact that individual?

Informal reports suggest that many institutions have failed to designate Title IX coordinators. Some have coordinators but have not publicized their names. On rare occasions, an administration may even designate a coordinator but neglect to notify that individual about the assignment. From a legal standpoint these situations all contravene federal requirements. From a practical standpoint, they are regrettable in light of the continuing discrimination problems in the academy. The Department of Education has authority to cut off federal funds to institutions that violate Title IX. Realistically, though, the department would be unlikely to impose that penalty for failure to name a Title IX coordinator.

It is lamentable that, 25 years after the enactment of Title IX, the simple requirement of naming a coordinator is so widely overlooked. The department reminded institutions about this obligation in its March 13, 1997, "Sexual Harassment Guidance" concerning sexual harassment of students. The guidance includes a passage on Title IX coordinators that raises several issues beyond the basic requirements. One is the possibility that the coordinator might herself or himself be implicated in a discrimination allegation. To anticipate this problem, a college or university may choose to designate more than one individual. Another issue is the potential usefulness of tracking complaints so that recurrent problems can be identified. On this point the guidance suggests the utility of having one overall coordinator, so that multiple complaints against a student or employee might be flagged. A final issue, perhaps most important, is the need to train Title IX coordinators on matters such as the definition of sexual harassment and the operation of the institution's internal procedures.

The National Coalition for Sex Equity in Education recently published an article calling for increased support for Title IX coordinators. Too often the coordinators have other primary assignments and devote little attention to gender discrimination problems. Better institutional support and recognition, more training, and networking among coordinators would serve to enhance their effectiveness. The authors suggest steps that the U.S. Department of Education might take. These include creating an advisory group on Title IX coordinators, developing and sharing lists of Title IX coordinators, conducting surveys, and sponsoring national and regional conferences. A new name, Title IX Gender Equity Coordinators, might also be helpful in promoting understanding of their role.

Readers concerned about gender discrimination in the academy can take several simple actions. Find out if your institution has a Title IX coordinator. If not, ask that one be appointed. Make sure that information on how to contact the individual is widely distributed. Call the coordinator, discuss the person's responsibilities, and ask whether appropriate resources are provided. Invite the coordinator to meet with the American Association of University Professors' (AAUP) chapter, the faculty senate, or other groups. Explore whether the coordinator is fully conversant with institutional policy and procedures on discrimination and harassment. The individual would, ideally, also be familiar with AAUP's policies on these subjects.

Further information is available from the Department of Education Customer Service Team at **800-421-3481** or from the web site **(www.ed.gov/offices/OCR)**.

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A college or university must designate an individual to coordinate its compliance with Title IX.

Better institutional support and recognition, more training, and networking among coordinators would serve to enhance their effectiveness.

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In a deeply split 5 to 4 ruling, the Court held that school districts are liable for money damages under Title IX only when a school official with authority to take corrective measures has actual knowledge of the harassment, and has acted with deliberate indifference.[7] Applying that standard to the facts, the Court rejected Gebser's Title IX claim. Even though the principal had received complaints about the teacher making inappropriate remarks in the classroom, the Court concluded that those complaints did not put the school district on notice of the teacher's sexual harassment of Gebser.

The new liability standard puts the onus on students and parents to complain, thus ensuring that school districts have "actual notice" of harassment.

The Court also found that the school district's failure to have a grievance procedure or formal anti-harassment policy, in violation of the Title IX regulations, did not, in and of itself, establish liability. Nonetheless, the Court emphasized that the Department of Education can enforce Title IX administratively, and made clear that schools are required to take corrective action once they know about sexual harassment. The Court also recognized that students who are sexually harassed by teachers suffer "extraordinary harm" and that the teacher's conduct "undermines the basic purposes of the educational system."

Recent Changes

Gebser marks a sea change in Title IX liability standards, at least for cases in which plaintiffs seek money damages. Before *Gebser*, many courts held schools liable for incidents of sexual harassment by a teacher without asking whether a high level official knew about the harassment or failed to act. Importantly, *Gebser* does not reach claims for injunctive relief, where, for instance, a plaintiff is seeking better sexual harassment policies or training, or asking for any other kind of non-monetary relief. *Gebser* also does not affect other types of legal claims, such as claims brought against individual harassers under 42 U.S.C. § 1983, or claims against school districts or individuals under state tort law or education laws.

Gebser's effect will be determined as lower courts around the country apply the new guidelines in the Court's opinion. Clearly, the new liability standard puts the onus on students and parents to complain, thus ensuring that school districts have "actual notice" of harassment. Actual notice can be established through written or oral complaints to school officials witnessing the harassment, or observing other evidence of harassment, such as fliers about the incident.[8] Students and parents must also be careful to notify school officials who have authority to take corrective action. Under *Gebser*, actual notice to school officials or employees who do not have such authority will not bind the school district.

Determining which school official should be notified of incidents of sexual harassment will differ from case to case. At a minimum, notifying Title IX coordinators, school board members, or school district superintendents should satisfy the standard, as should notifying school officials with direct authority over the harasser, such as principals or assistant principals. In cases of peer sexual harassment, a broader range of school officials should be

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Sexual Harassment: Effective Policies for Prevention

The first step in preventing sexual harassment is developing an effective policy to combat it. Some key elements include:

- User-friendly language, demonstrating the institution's commitment to ending sexual harassment and other forms of harassment.
- Definition of sexual harassment, making clear that harassment is a violation of Title IX. The definition should include examples of prohibited conduct.
- Procedures to follow for making formal and informal complaints of sexual harassment, identifying the contact person.
- Provisions to protect victim's confidentiality and ensure no retaliation.
- Description of other legal remedies available to victims, including filing a complaint with the regional Office for Civil Rights.
- Wide accessibility of the policy throughout the institution.

National Coalition for Women and Girls in Education, Report Card on Gender Equity, *(Washington, D.C.: National Women's Law Center, 1997)* ◆

deemed to have authority to take corrective action than in cases of teacher-student harassment. Arguably, any teacher or adult in the school community has the authority to discipline or reprimand a student who is sexually harassing another student. To be extremely cautious, however, parents, students, and advocates may wish to notify the Title IX coordinator, the principal, school board members, or the superintendent in all sexual harassment cases.

Under *Gebser*, once a school district knows about sexual harassment, it will be held liable if a school official with authority to take corrective action acted with deliberate indifference. While courts have not yet interpreted this standard, factors that may constitute deliberate indifference include: failure to appoint a Title IX coordinator, discouraging students or parents from complaining, actively disregarding known sexual harassment, or taking steps that are known to be ineffectual.

While litigation will never, on its own, solve a problem as deep-seated and multi-faceted as sexual harassment in schools, it hopefully will contribute to the solution by raising awareness of schools' legal obligation to act. The bottom line is that students, parents, and schools share the same goal: preventing sexual harassment from happening. Schools can meet that goal by instituting effective anti-harassment policies and grievance procedures, conducting anti-harassment training, and sending a strong message that sexual harassment will not be tolerated.

The law in this area is rapidly developing. If you have a question about a Title IX sexual harassment case or would like to discuss strategies for bringing information about Title IX to your school district, please consult the list of resource organizations included in this issue of the *Digest*, or visit the Title IX room at the WEEA Equity Resource Center's web site at **www.edc.org/WomensEquity**.

The bottom line is that students, parents, and schools share the same goal: preventing sexual harassment from happening.

Notes

1. 29 U.S.C. § § 1681 et seq.
2. 503 U.S. 60 (1992).
3. 830 F. Supp. 1560 (N.D. Cal. 1993).
4. "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties," 62 Fed. Reg. 12,034 (1997) [hereinafter "OCR Guidance"].
5. 118 S. Ct. 1989 (1998).
6. Justice O'Connor wrote the majority opinion, and was joined by Chief Justice Rehnquist, and Justices Scalia, Thomas, and Kennedy. Justice Stevens dissented, and was joined by Justices Souter, Ginsburg, and Breyer. Justice Ginsburg also dissented, and was joined by Justices Souter and Breyer.
7. OCR Guidance at 12,042. ◆

The U.S. Supreme Court's *Gebser v. Lago Vista* Decision: The Impact on Title IX

Statement by U.S. Secretary of Education Richard W. Riley

"While the decision [in *Gebser v. Lago Vista Independent School District*] limits the situations where litigants can obtain damages from a school district in a private Title IX lawsuit, it does not undermine the fact that sexual harassment discrimination violates Title IX. . . .

"When a school district learns of sexual harassment discrimination it must act immediately to end the harassment, eliminate the effects of the harassment on the victim and other students, and prevent the harassment from recurring. . . .

"The Supreme Court's decision explicitly recognized that the Department can enforce administratively its Title IX regulation that requires schools and school systems to have well publicized policies against discrimination based on sex, including sexual harassment discrimination; to have effective and well-publicized procedures for students and their families to raise and resolve these issues; and to take prompt and effective action to equitably resolve sexual harassment complaints. . . .

"Schools owe students a safe environment that is conducive to learning and that affords children equal educational opportunity regardless of sex."

Excerpted from a U.S. Department of Education July 1, 1998, press release. Full text is on the Internet (www.ed.gov/PressReleases/07-1998/lago.html).

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Trends in Sexual Harassment Litigation Under Title IX

By Yolanda Wu, NOW Legal Defense and Education Fund

Title IX prohibits student-to-student sexual harassment.

With the passage of Title IX,[1] and increasing awareness of sexual harassment in general, sexual harassment in schools has gained recognition as a serious problem. A growing number of students and parents have pursued court action against school districts that fail to remedy sexual harassment.

Supreme Court Decisions

The Supreme Court decided its first Title IX school sexual harassment case in 1992. That case, *Franklin v. Gwinnett County Public Schools*, involved sexual harassment of a high school student by a teacher.[2] The Court recognized that private individuals bringing Title IX suits could sue schools for monetary damages. Since *Franklin*, Title IX sexual harassment litigation has burgeoned. In a 1993 case jointly litigated by NOW Legal Defense and Education Fund and Equal Rights Advocates, *Doe v. Petaluma City School District*, a federal court issued a landmark ruling recognizing that Title IX prohibits student-to-student sexual harassment.[3] In March 1997 the federal agency that enforces Title IX, the U.S. Department of Education's Office for Civil Rights (OCR), issued a policy guidance describing schools' potential liability for sexual harassment of students. The OCR guidance confirmed schools' responsibility for preventing and remedying sexual harassment.[4]

While *Franklin* clarified that harassed students could sue schools for money damages under Title IX, it did not decide when and how schools will be held liable. In June 1998, the Supreme Court addressed that question in *Gebser v. Lago Vista Independent School District*.[5] Like *Franklin*, *Gebser* involved sexual harassment of a student by a teacher.

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WEEA is the Women's Educational Equity Act, a federal mandate to provide educational equity for women and girls.

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